

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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May 10, 2010

Legend

X =

Trust =

State =

A =

d1 =

d2 =

d3 =

d4 =

n =

p =

\$w =

Year =

Dear :

This letter responds to your letter dated January 12, 2010, submitted on behalf of X, requesting a ruling under § 1362(f) of the Internal Revenue Code.

Facts

X was incorporated under the laws of State on d1. X elected to be an S corporation effective d2. At that time, Trust owned n shares of X. A was the sole income beneficiary of Trust until A's death on d3. Prior to A's death, Trust was a Qualified Subchapter S Trust (QSST) within the meaning of § 1361(d).

Upon A's death, Trust's beneficiaries were A's p living children. Because Trust had more than one income beneficiary after B's death, Trust no longer qualified as a QSST. X represents that Trust was qualified to be an Electing Small Business Trust (ESBT), within the meaning of § 1361(e). However, no election was made under § 1361(e)(3) to treat Trust as an ESBT. Consequently, Trust became an ineligible shareholder and X's S corporation election terminated on d3.

X represents that there was no intent to terminate X's S corporation election and that the failure to timely file the ESBT election for Trust was inadvertent. X and X's shareholders agree to make any adjustments consistent with the treatment of X as an S corporation as may be required by the Secretary with respect to the period specified by § 1362(f).

Law and Analysis

Section 1361(a)(1) provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) defines a "small business corporation" as a domestic corporation which is not an ineligible shareholder and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(c)(2)(A)(v) provides that for purposes of § 1361(b)(1)(B), an ESBT is a permissible shareholder.

Section 1361(e)(1)(A) provides that, except as provided in § 1361(e)(1)(B), the term "electing small business trust" means any trust if (i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in § 170(c)(2)-(5), or (IV) an organization described in § 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary, (ii) no

interest in such trust was acquired by purchase, and (iii) an election under § 1361(e) applies to such trust.

Section 1361(e)(3) provides that an election under § 1361(e) shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

Section 1362(d)(2)(A) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3); (2) the Secretary determines that the circumstances resulting in such termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such termination, steps were taken so that the corporation for which the termination occurred is a small business corporation; and (4) the corporation for which the termination occurred, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make the adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to this period, then, notwithstanding the circumstances resulting in the termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Section 1.1362-4(d) provides that the Commissioner may require any adjustments that are appropriate. In general, the adjustments required should be consistent with the treatment of the corporation as an S corporation during the period specified by the Commissioner.

Conclusion

Based solely on the facts submitted and representations made, we conclude that X's S corporation election was terminated on d3 when Trust ceased to qualify as a QSST and Trust failed to timely file an ESBT election under § 1361(e)(3). We further conclude that the termination was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation on and after d3, unless X's S corporation election was otherwise terminated under § 1362(d) and provided that the following conditions are met.

As an adjustment under § 1362(f)(4), a payment of \$w and a copy of this letter must be sent to the following address: Internal Revenue Service, Cincinnati Service Center, 201 West Rivercenter Blvd.; Covington, KY 41011; Stop 31; Terri Lackey; Manual Deposit. This payment must be sent no later than d4. In addition, the trustee of

Trust must file an ESBT election effective d3 with the appropriate service center within 60 days of the date of this letter. A copy of this letter should be attached to the ESBT election. Finally, the trustee of Trust must make appropriate adjustments including filing amended tax returns, if any are required, for open tax years including Year to bring Trust in compliance with the ESBT requirements.

Except for the specific ruling above, no opinion is expressed or implied concerning the federal tax consequences of the facts of this case under any other provision of the Code. Specifically, no opinion is expressed or implied regarding X's eligibility to be an S corporation or Trust's eligibility to be an ESBT.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Under a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

David R. Haglund

David R. Haglund

Chief, Branch 1

Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

cc: